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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In Re:

Case No. 18-03197-11

GIGA WATT INC.,

Debtor in Possession.

**DECLARATION OF TIMOTHY R.
FISCHER IN RESPONSE TO
OBJECTION TO FEE APPLICATION**

The undersigned, Timothy R. Fischer, makes the following declaration:

1. I was one of the attorneys of record for the Debtor and competent to be witness herein.

2. Counsel is not receiving ECF notice as the firm was removed from ECF notice after withdrawing. Counsel did not receive the memorandums and objections from the US Trustee by mail.

3. The firm received funds from what was believed to be the debtor's owner, as the entity did not have sufficient funds to employ counsel.

4. Debtor's counsel believed that disclosure was made of the retained funds and the source of the funds in the application.

DECLARATION OF TIMOTHY R. FISCHER - 1

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1 5. When it was raised later, upon discussions with the Chapter 11 Trustee, counsel
2 immediately corrected the error. As the duty to disclose is a continuing one, as soon as
3 counsel was aware of the missing information, he purposefully disclosed.
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5 6. The counsel believed all necessary information to be disclosed. At the time it was
6 filed, the filing was an emergency filing with many documents being drafted and filed in
7 an extremely fast manner in a complicated case.
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9 7. The court has the discretion to grant or deny fees in a Chapter 11 case. Although a
10 denial of fees may be warranted, such a severe sanction is not always warranted based on
11 factors including willfulness, lack of intent, mistake, lack of harm to the estate, cure of
12 the mistake, and continuing cooperation with the Trustee. *In re Howard Avenue Station,*
13 *LLC*. 568 B.R. 146 (Bankr. M.D. Fla. 2017)(disagreeing with *In re Whitcomb*, 479 B.R.
14 133 (Bankr. M.D. Fla. 2012); *In re Dellutri Law Group*, 434 B.R. 642 (Bankr. M.D. Fla
15 2012). Counsel continues to assist the Chapter 11 Trustee. The Court has the discretion
16 to grant partial relief, as well, perhaps halving the amount requested, or allowing award
17 as to the amount of funds in the attorney's possession. *In re Metropolitan*
18 *Environmental*, 293 B.R. 871 (Bankr. N.D. Ohio 2003)
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22 8. Counsel expanded an enormous amount of time and effort to turn the Debtor
23 around and obtain necessary financing.
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25 9. There is no evidence, only an allegation, that any fraudulent conveyance exists.

26 10. Counsel withdrew for reasons conveyed to the Chapter 11 Trustee.
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DECLARATION OF TIMOTHY R. FISCHER - 2

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1 I certify under penalty of perjury pursuant to the laws of the State of Washington and
2 the United States of America that the foregoing Declaration is true and correct.

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4 SIGNED at Spokane, Washington, this 20th day of May, 2019.

5 /s/ *Timothy R. Fischer*

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TIMOTHY R. FISCHER

DECLARATION OF TIMOTHY R. FISCHER - 3

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